

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAMONE WALKER, a/k/a ROMONE EARL
WALKER,

Defendant-Appellant.

UNPUBLISHED

March 30, 2001

No. 222388

Kent Circuit Court

LC No. 99-000709-FH

Before: Saad, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

The jury convicted defendant of one count of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The court sentenced defendant as a second habitual offender, pursuant to MCL 769.10; MSA 28.1082, to five to fifteen years' imprisonment for the assault with intent to do great bodily harm conviction and two years' imprisonment for the conviction for possession of a firearm during the commission of a felony. Defendant appeals as of right, and we affirm.

Defendant contends that there was insufficient evidence to support his assault with intent to do great bodily harm conviction.

In reviewing the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999).

The elements of assault with intent to do great bodily harm less than murder are: an assault or "an attempt or offer with force and violence to do corporal hurt to another" and a specific intent to do great bodily harm less than murder. *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325, amended 453 Mich 1204 (1996). See also MCL 750.84; MSA 28.279.

Here, defendant contends that the prosecution failed to prove the "intent" element of the crime. The element of intent may be shown by the words or conduct of the defendant. *People v Mack*, 112 Mich App 605, 611; 317 NW2d 190 (1981). Although the injuries sustained by the

victim may constitute evidence of a defendant's intent, *People v Pena*, 224 Mich App 650, 659-660; 569 NW2d 871 (1997), mod on other grounds 457 Mich 885 (1998), they are not necessary to establish intent, *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992). Obviously, a gun fired directly at the victim by the defendant establishes intent though no bullet actually strikes the victim. *Id.*

Viewing the evidence in a light most favorable to the prosecutor, we find that the prosecutor proved intent. The victim testified that defendant fired three gunshots in her direction. It is irrelevant that the three gunshots did not strike the victim because sufficient evidence allowed a reasonable trier of fact to find that defendant intended to do great bodily harm to the victim.

Defendant also says that the testimony of a Grand Rapids police detective denied him a fair trial. Defendant claims that the detective's testimony about defendant's previous arrest was error, but reversal is not required.

Police officers have a special duty not to make prejudicial and irrelevant remarks during their testimony. *People v Holly*, 129 Mich App 405, 415-416; 341 NW2d 823 (1983). This prohibition includes inadmissible statements that the defendant was previously arrested or charged with another crime. *Id.*, 415-416; *People v McCarver*, 87 Mich App 12, 15; 273 NW2d 570 (1978). Such testimony, even if nonresponsive, may require reversal, *People v O'Brien*, 113 Mich App 183, 209; 317 NW2d 570 (1982), unless the other evidence clearly demonstrates the defendant's guilt. *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000).

Here, even if the detective's testimony concerning defendant's prior arrest constituted error, reversal is not required because substantial evidence demonstrates defendant's guilt. Trial testimony showed that the victim identified defendant in a lineup, the victim recognized defendant's voice and walk, and defendant made an unequivocal confession to an acquaintance. Further, defendant's own statement to the detective contained factual inconsistencies, including his outright denial that he knew the victim, which he later retracted. Also, as predicted by defendant's acquaintance, defendant produced several friends and family members during his interview with the detective to establish his own alibi.

Additionally, defendant contends he was denied a fair trial because the detective improperly vouched for the victim's identification of defendant as the intruder. Because defense counsel did not object to this testimony, defendant must show that: (1) an error occurred; (2) the error was plain, i.e., clear or obvious; and (3) the plain error affected his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Reversal is warranted only when the plain, unpreserved error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings' independent of the defendant's innocence." *Id.* at 763-764.

It is improper for a witness to comment on the credibility of another witness. *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985). Rather, matters concerning credibility should be determined by the trier of fact. *Id.*

However, defendant has failed to show that any error affected his substantial rights because ample evidence established defendant's guilt. Accordingly, defendant's claim must fail.

Defendant also argues that defense counsel was ineffective because he failed to object to the detective's testimony when he vouched for the victim's identification.

Because defendant did not move for an evidentiary hearing or a new trial, our review of this issue is limited to mistakes apparent on the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973). To establish ineffective assistance of counsel, and to justify reversal of an otherwise valid conviction, a defendant must show that: (1) counsel's representation fell below an objective standard of reasonableness, and (2) the representation so prejudiced the defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). "To demonstrate prejudice, the defendant must show that, but for counsel's error, the result of the proceedings would have been different." *People v Henry*, 239 Mich App 140, 146; 607 NW2d 767 (1999). The defendant must also overcome the presumption that the challenged action or omission could conceivably be considered sound trial strategy under the circumstances. *People v Rice (On Remand)*, 235 Mich App 429, 444; 597 NW2d 843 (1999).

Defendant's ineffective assistance of counsel claim fails because he cannot demonstrate prejudice. There is no indication that the outcome of defendant's trial would have been different had defense counsel objected to the detective's testimony, particularly given the overwhelming evidence linking defendant to the crime.

Finally, defendant claims that the prosecutor engaged in misconduct by mentioning facts not in evidence during his closing argument. We hold that the prosecutor's statement does not warrant reversal because it was not prejudicial to defendant. Rather, the prosecutor simply told the jurors the location of defendant's arrest. Because the arrest itself was self-evident, its location was immaterial. Moreover, the statement did very little to bolster the credibility of the acquaintance. Accordingly, we find this error to be harmless.

Affirmed.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell